IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4374 OF 2006

Smt.Meerabai w/o K.Sabhandasani)
& Ors.)..Petitioners

Versus

The Commissioner, Municipal Corpn.)
of City of Ulhasnagar & ors.)..Respondents

S/shri A.Y.Sakhare Sr.Advocate alongwith Rajesh Datar for the petitioners.

S/shri R.S.Apte with M.S.Lagu for respondent no.4.

Shri S.R.Nargolkar AGP for respondent no.3.

Shri Vijay D.Patil for respondent nos.1 & 2.

Coram : S.B.Mhase &
R.S.Mohite,JJ

Date : 18.04.2007

PC

1. Heard learned Counsel for all the parties.

2. The property bearing plot no.93, CTS no.24 of Ulhasnagar stands in the name of a partnership firm. It is the case of the petitioner that there was a family arrangement and the property is given to the petitioner in a family arrangement. However, there appears to be dispute over this. Apart from that, we find that certain permissions which were granted by the respondent-corporation in favour of respondent no.4 to construct the building and allowing him to consume FSI in respect of the said

plot, appears to have been given on the basis of the land record in favour of the partnership firm. We also find from the record of the Corporation that respondent no.4 was acting as a partner of the said firm and also a power of attorney of the said partnership firm. So, that creats a disputed issue as to whether the permissions which were granted by the Corporation were in an individual capasity of respondent no.4 and/or to a partnership firm and/or as a power of attorney holders for all the partners. All these disputed questions of fact cannot be gone into and investigated in a writ petition under Article 226 of the Constitution of India and all these issues therefore, will have to be thrashed out if the petitioner files a civil suit under the law. We therefore, refrain to entertain the petition. However, the petitioner is at liberty to file an appropriate suit for the reliefs as against the respondents. However, we make it clear that the Civil Court while considering the contentions of the parties, shall not be influenced by the observations made by this Court in this order and will consider the matter on its own merits on the basis of the evidence. We make it clear that all the issues arising between the parties have been kept open for adjudication for the civil Court. With these observations, we dispose off the petition.

(R.S.Mohite,J) **(S.B.Mhase,J)**